Cray Construction Group LLC *and* Laborers International Union of North America, Local 130, AFL–CIO. Case 4–CA–32367

March 5, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS WALSH AND MEISBURG

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by the Union on August 18, 2003, the General Counsel issued the complaint on November 26, 2003, against Cray Construction Group LLC (the Respondent), alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On December 23, 2003, the General Counsel filed a Motion for Default Judgment with the Board. On December 24, 2003, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed on or before December 10, 2003, all the allegations in the complaint may be found to be true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated December 10, 2003, notified the Respondent that unless an answer was received by December 17, 2003, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Pennsylvania corporation, with an office in Gap, Pennsylvania, has been engaged as a concrete contractor in the construction industry.

During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operations described above, at a parking garage construction project located in Scranton, Pennsylvania, provided services valued in excess of $50,000 directly to the Quandel Group, Inc., an enterprise located within the Commonwealth of Pennsylvania.

At all material times, the Quandel Group, Inc., a Pennsylvania corporation, with an office and place of business in Harrisburg, Pennsylvania, has been engaged as a construction general contractor.

During the past year, the Quandel Group, Inc., in conducting its business operations described above, purchased and received at its Harrisburg, Pennsylvania office goods and services valued in excess of $50,000 directly from points outside the Commonwealth of Pennsylvania.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Laborers International Union of North America, Local 130, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Michael Smith has held the position of the Respondent's President and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

On or about March 18, 2003, the Respondent became signatory to, and bound to the terms of, the collective-bargaining agreement (the Agreement), between Laborers' District Council of Eastern Pennsylvania and General and Sub-Contractors' Associations, effective by its terms from May 1, 1998 to April 30, 2003, and continuing in effect from year to year thereafter unless either party submits notice of termination "in writing to the other party not less than 60 days prior to the expiration date."

The Respondent has not notified the Union of its intent to terminate the Agreement pursuant to the terms therein.

Pursuant to the Agreement, the Respondent recognized the Union as the exclusive collective-bargaining representative of a unit consisting of journeymen laborers, construction specialists, mason and plaster tenders, skid-steering loader and forklift laborers, masonry crane laborers, and foremen performing work within the geographic jurisdiction of the Union.

The Respondent engaged in the conduct described above without regard to whether the majority status of

the Union had ever been established under the provisions of Section 9(a) of the Act.

At all material times, the unit has been appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

At all material times since at least March 18, 2003, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the unit.

Since on or about April 15, 2003, the Respondent has ceased abiding by the Agreement while performing work within the geographic jurisdiction of the Union by, inter alia, failing and refusing to remit dues moneys to the Union and to make wage payments to employees as required by the Agreement.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

The Respondent engaged in the conduct described above without prior notice to the Union and without having afforded the Union an opportunity to bargain with the Respondent concerning this conduct.

The Respondent engaged in the conduct described above without the Union's consent.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively with the limited exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.[1]

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by, inter alia, failing and refusing since April 15, 2003, to remit dues moneys to the Union, we shall order the Respondent to remit to the Union all such dues moneys that were deducted from unit employees' pay pursuant to valid dues-checkoff authorizations, as required by the Agreement, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent violated Section 8(a)(5) and (1) since April 15, 2003, by otherwise ceasing to abide by the agreement, including by failing and refusing to make wage payments to employees as required by the Agreement, we shall order the Respondent to make whole its unit employees for any loss of earnings and other benefits they have suffered as a result. All payments to employees shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Cray Construction Group LLC, Gap, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to abide by its collective-bargaining agreement by, inter alia, failing and refusing to remit dues moneys to Laborers' International Union of North America, Local 130, AFL–CIO, and failing and refusing to make wage payments to unit employees. The appropriate unit includes journeymen laborers, construction specialists, mason and plaster tenders, skid-steering loader and forklift laborers, masonry crane laborers, and foremen performing work within the geographic jurisdiction of the Union.

[1] The complaint also alleges that the Respondent violated Sec. 8(a)(5) of the Act by failing to make contributions to "certain funds" as required by the contract. However, neither the complaint nor the motion describe what those funds are. The Board has held that certain types of benefit funds are permissive subjects of bargaining for which no remedy would be warranted. See, e.g., *Finger Lakes Plumbing & Heating Co.*, 254 NLRB 1399 (1981) (industry advancement fund). There is no indication here as to the nature of the funds involved. In these circumstances, we decline to find that the Respondent violated the Act by refusing to make contributions to these unspecified funds. Accordingly, the motion is denied with respect to this allegation, and the matter is remanded to the Regional Director for further appropriate action. Nothing herein will require a hearing if, in the event of an appropriate amendment to the complaint, the Respondent again fails to answer, thereby admitting evidence that would permit the Board to find the alleged violation. In such circumstances, the General Counsel may renew the motion for default judgment with respect to the amended complaint allegations. *See VMI Cabinets and Millwork*, 340 NLRB No. 143, slip op. at 3 fn. 2 (2003) (default judgment denied as to allegation that respondent failed to bargain over decision to close business); *St. Regis Hotel*, 339 NLRB No. 25, slip op. at 2 fn. 3 (2003) (default judgment denied as to information request for "other matters important to the Union."); see also *Michigan Inn*, 340 NLRB No. 115, slip op. at 7 (2003) (complaint not well pleaded if too vague to determine whether a violation occurred).

Member Walsh notes that although the complaint does not describe the "certain funds," it alleges that they are mandatory subjects of bargaining. By failing to file an answer, the Respondent has admitted this complaint allegation. Therefore, Member Walsh would grant default judgment with respect to the Respondent's uncontested failure to make the fund contributions. However, he would leave to compliance the issue of whether any of the funds are permissive subjects of bargaining for which no remedy would be warranted.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remit to the Union dues that were deducted from unit employees' pay pursuant to valid dues-checkoff authorizations, and that were not remitted since about April 15, 2003, as required by the collective-bargaining agreement, with interest, in the manner set forth in the remedy section of this Decision.

(b) Make whole unit employees for any loss of earnings and other benefits ensuing from its failure to abide by the collective-bargaining agreement since April 15, 2003, including its failure to make the contractually required wage payments to employees, with interest, as set forth in the remedy section of this Decision.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Gap, Pennsylvania, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 15, 2003.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 5, 2004

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Robert J. Battista, Chairman

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Dennis P. Walsh, Member

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Ronald Meisburg, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to abide by our collective-bargaining agreement by, among other things, failing and refusing to remit dues moneys to Laborers' International Union of North America, Local 130, AFL–CIO, and failing and refusing to make wage payments to our unit employees. The appropriate unit includes journeymen laborers, construction specialists, mason and plaster tenders, skid-steering loader and forklift laborers, masonry crane laborers, and foremen performing work within the geographic jurisdiction of the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL remit to the Union dues that were deducted from unit employees' pay pursuant to valid dues-checkoff authorizations, and that were not remitted since about April 15, 2003, as required by the collective-bargaining agreement, with interest.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL make whole our unit employees for any loss of earnings and other benefits ensuing from our failure to abide by the collective-bargaining agreement since April 15, 2003, including our failure to make the contractually required wage payments to employees, with interest.

CRAY CONSTRUCTION GROUP LLC